

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NORFOLK SOUTHERN RAILWAY COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-1808
	)	
CITY OF PITTSBURGH,	)	Judge Conti
	)	Magistrate Judge Hay
Defendant.	)	

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CITY OF PITTSBURGH,	)
	)
Third-Party Plaintiff,	)
	)
v.	)
	)
CHARLES L. DESMONE & ASSOCIATES	)
tdba DESMONE & ASSOCIATES	)
ARCHITECTS,	)
	)
Third-Party Defendants.	)

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CHARLES L. DESMONE & ASSOCIATES	)
tdba DESMONE & ASSOCIATES	)
ARCHITECTS,	)
	)
Fourth-Party Plaintiff,	)
	)
v.	)
	)
MAZZA ENGINEERING ASSOCIATES,	)
Inc.,	)
Fourth-Party Defendant	)

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**ORDER**

AND NOW, this 31st day of August, 2005, after the plaintiff, Norfolk Southern Railway Company ("Norfolk Southern"), filed an action in the above-captioned case against the City of

Pittsburgh (the "City"), and after Norfolk Southern filed a Motion for Temporary Restraining Order, and after the City filed a Motion for Partial Dismissal of Plaintiff's Complaint, and after Norfolk Southern filed a Motion for Preliminary Injunction, and after the Court held a preliminary injunction hearing, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties ten days after being served with a copy to file written objections thereto, and certain objections having been filed, and upon independent review of the motions and the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS ORDERED that the Motion for Temporary Restraining Order (dkt. no. 19) is DISMISSED as moot; that the Motion for Partial Dismissal of Plaintiff's Complaint (dkt. no. 13) is GRANTED and Count I of the Complaint is DISMISSED; and that the Motion for Preliminary Injunction (dkt. no. 26) is GRANTED.

IT IS FURTHER ORDERED that the City shall immediately undertake necessary and appropriate measures to abate, correct and remedy the continuing landslides at Corfu Street (Milepost ML 4.3 on Norfolk Southern's Monongahela Line), such as the remedial

measures<sup>1</sup> set forth in the December 2004 report of D'Appolonia Engineers prepared for and commissioned by the City.

IT IS FURTHER ORDERED that, in accordance with Rule 65(c), Fed.R.Civ.P., Norfolk Southern shall post a bond in the amount of 2.2 million dollars.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the parties desire to appeal from this Order they must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed.R.App.P.

/s/ Joy Flowers Conti

JOY FLOWERS CONTI

United States District Judge

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<sup>1</sup>Those reported measures are: (1) excavating the slope to a more stable configuration and relocating the roadway, i.e., Corfu Street, to the rear of the topographic bench, together with the installation of short lengths of retaining walls to support the remnant front yards of the two houses remaining on Corfu Street; or (2) constructing an anchored retaining wall along the north edge of Corfu Street to maintain the roadway in its current location.

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